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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/622,538	07/21/2003	Grant Pierce	81190-2202	3896
75	90 08/24/2006		EXAM	INER
Michael R.Williams Ade & Company			VU, JAKE MINH	
1700-360 Main Street			ART UNIT	PAPER NUMBER
Winnipeg, MB R3C 3Z3 CANADA			1618	
		DATE MAILED: 08/24/2006		

Please find below and/or attached an Office communication concerning this application or proceeding.

	Application No.	Applicant(s)			
	10/622,538	PIERCE ET AL.			
Office Action Summary	Examiner	Art Unit			
	Jake M. Vu	1618			
The MAILING DATE of this communication a Period for Reply	appears on the cover sheet with the o	correspondence address			
A SHORTENED STATUTORY PERIOD FOR REI WHICHEVER IS LONGER, FROM THE MAILING Extensions of time may be available under the provisions of 37 CFR after SIX (6) MONTHS from the mailing date of this communication. If NO period for reply is specified above, the maximum statutory peri Failure to reply within the set or extended period for reply will, by sta Any reply received by the Office later than three months after the may earned patent term adjustment. See 37 CFR 1.704(b).	DATE OF THIS COMMUNICATION 1.136(a). In no event, however, may a reply be tire 1.136(b) and will expire SIX (6) MONTHS from 1.1111 tutte, cause the application to become ABANDONE	N. nely filed the mailing date of this communication. ED (35 U.S.C. § 133).			
Status					
1) Responsive to communication(s) filed on 21	<u>July 2003</u> .				
<i>,</i> —	This action is FINAL. 2b) ☐ This action is non-final.				
3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is					
closed in accordance with the practice unde	er Ex parte Quayle, 1935 C.D. 11, 4	53 O.G. 213.			
Disposition of Claims					
4)⊠ Claim(s) <u>1-10</u> is/are pending in the applicati	on.				
4a) Of the above claim(s) is/are withdrawn from consideration.					
5) Claim(s) is/are allowed.		•			
6) Claim(s) is/are rejected.					
7) Claim(s) is/are objected to.					
8)⊠ Claim(s) <u>1-10</u> are subject to restriction and/	or election requirement.				
Application Papers					
9) ☐ The specification is objected to by the Exam	iner.				
10) The drawing(s) filed on is/are: a) a	accepted or b) objected to by the	Examiner.			
Applicant may not request that any objection to t	he drawing(s) be held in abeyance. Se	e 37 CFR 1.85(a).			
Replacement drawing sheet(s) including the corr					
11)☐ The oath or declaration is objected to by the	Examiner. Note the attached Office	Action or form PTO-152.			
Priority under 35 U.S.C. § 119					
12) ☐ Acknowledgment is made of a claim for fore	ian priority under 35 U.S.C. § 119(a)-(d) or (f).			
a) ☐ All b) ☐ Some * c) ☐ None of:	3				
1. Certified copies of the priority docume	ents have been received.				
2. Certified copies of the priority docume	ents have been received in Applicat	ion No			
Copies of the certified copies of the p	riority documents have been receive	ed in this National Stage			
application from the International Bur	, , , ,				
* See the attached detailed Office action for a l	list of the certified copies not receive	ed.			
Attachment(s)	_				
 Notice of References Cited (PTO-892) Notice of Draftsperson's Patent Drawing Review (PTO-948) 	4) Interview Summary Paper No(s)/Mail D				
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948) 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/Paper No(s)/Mail Date 		Patent Application (PTO-152)			

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DETAILED ACTION

Election/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- Claims 1-3 and 10, drawn to a composition, classified in class 424, subclass 439.
- II. Claims 4-8, drawn to a method of producing an edible animal product with elevated levels of omega-3 fatty acids, classified in class 424, subclass 442.
- III. Claim 9, drawn to a method of increasing uptake of omega-3 fatty acids, classified in class 424, subclass 439.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as apparatus and product made. The inventions in this relationship are distinct if either or both of the following can be shown: (1) that the apparatus as claimed is not an obvious apparatus for making the product and the apparatus can be used for making a materially different product or (2) that the product as claimed can be made by another and materially different apparatus (MPEP § 806.05(g)). In this case the composition could be made without feeding animals, such as combining the ingredients in a laboratory.

Inventions I and III are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the

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process for using the product as claimed can be practiced with another materially

different product or (2) the product as claimed can be used in a materially different

process of using that product. See MPEP § 806.05(h). In the instant case, a patient

could eat salmon to increase uptake of omega-3 fatty acids.

Inventions II and III are unrelated. Inventions are unrelated if it can be shown

that they are not disclosed as capable of use together and they have different designs,

modes of operation, and effects (MPEP § 802.01 and § 806.06). In the instant case, the

different inventions are a method of producing an animal product with elevated levels of

omega-3 fatty acids and a method of increasing omega-3 fatty acids in a patient. These

two methods are different from each other.

Because these inventions are independent or distinct for the reasons given

above and the inventions require a different field of search (see MPEP § 808.02),

restriction for examination purposes as indicated is proper.

This application contains claims directed to the following patentably distinct

species:

1. Eggs

2. Milk

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Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claim 4 generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which depend from or otherwise require all the limitations of an allowable generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

A telephone call was made to Mr. William Michaels on 08/17/2006 to request an oral election to the above restriction requirement, but did not result in an election being made.

Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species or invention to be examined even though the requirement be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

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The election of an invention or species may be made with or without traverse. To reserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse.

Should applicant traverse on the ground that the inventions or species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the inventions or species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C.103(a) of the other invention.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Telephonic Inquiries

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jake M. Vu whose telephone number is (571) 272-8148. The examiner can normally be reached on Mon-Fri 8:30AM-5:00PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Hartley can be reached on (571) 272-0616. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Jake M. Vu, PharmD, JD Art Unit 1618

MICHAEL G. HARTLEY
SUPERVISORY PATENT EXAMINER